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| 10/018,979      | 12/18/2001  | Herbert Schumacher   | (E) 1734 US         | 5959             |

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07/13/2005

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| EXAMINER |
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MCCLLOUD, RENATA D

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| ART UNIT | PAPER NUMBER |
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2837

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/018,979

Applicant(s)

SCHUMACHER ET AL.

Examiner

Renata McCloud

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 23 and 25-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23 and 25-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The reply filed on 08 February 2005 is missing the substitute specification as indicated in Applicant's remarks. Therefore the objection has not been withdrawn.

### ***Specification***

2. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING (S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "motor vehicle engine" (see claim 63), "control electronics" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 23-63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 23 and 63 recite the broad recitation "a plurality of mufflers", and the claim also recites, " wherein the plurality of mufflers comprise two mufflers" which is the narrower statement of the range/limitation. Claims 23 and 63 also recite the broad recitation "a plurality of outlets", and the claim also recites, " the plurality of outlets comprise two outlets" which is the narrower statement of the range/limitation.

Claim 50 recites the limitation "the partition". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 23,25-28,51-54 are rejected under 35 U.S.C. 102(e) as being anticipated by Meusen (US 6,178,745).

**Claim 23:** a plurality of mufflers (Fig. 1: 12), and an actuator (Fig. 1: 9) for changing a flow resistance of exhaust gases flowing through the mufflers (12) to change the damping characteristic of the muffler device, wherein the actuator (Fig. 1:9; Fig. 2:29) is provided in a pipe bifurcation comprising an inlet (Fig. 1: 2; Fig. 2:22) and a plurality of outlets (Fig. 1: 8,9; Fig. 2: out from 24, 25), each outlet being connected by a connecting pipe to one of the mufflers (12), and a throughflow cross section of the inlet being variable by means of the actuator (Fig. 1: 9; Fig. 2:29); wherein there are two mufflers (Fig. 1: 12) and two outlets (Fig. 1:8,9).

**Claims 25 and 51:** the mufflers are of like construction (Fig. 1: 12).

**Claims 26 and 52:** the connecting pipes (Fig. 1:5,4) have an equal flow cross-section.

**Claims 27 and 53:** the outlets (24,25) are symmetrical with respect to the inlet (26) and the actuator (29) extends along and symmetrically of the axial axis of the inlet (26).

**Claim 28 and 54:** the actuator (9) is united with the pipe (3).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 34 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meusen as applied to claims 23 and 24 above in view of Fallon (U.S. Patent 4,913,260).

**Claims 34 and 59:** Meusen teaches the limitations of claims 23 and 24. Referring to claims 34 and 59, Meusen teaches the actuator comprising a control valve (Fig. 1:10). Meusen does not teach the control valve comprising a valve plunger and a closure member comprising a valve disk selected from a flattened, conical or hemispherical valve disk or valve member. Fallon teaches the actuator comprising a control valve (Fig. 5:36) comprising a valve plunger (Fig. 5:38) and a closure member comprising a valve disk selected from a flattened, conical or hemispherical valve disk or valve member (Fig. 5:26).

*It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the muffler taught by Meusen to include the teachings of Fallon. The advantage of this would be means for a driver to control the bypass valve and the amount of bypass gas flow, thereby providing means to vary the attenuation of gas flow sound.*

10. Claims 30,31, 49and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meusen as applied to claim 23 above, and further in view of Olszok et al (U.S. Patent 5,821,474).

**Claims 30 and 56:** Meusen teaches the limitations of claim 23. Referring to claims 30 and 56, Meusen does not teach the actuator comprising a closure member that engages with the inlet and has on its periphery at least one indentation equally distributed on the periphery. Olszok et al teach an actuator (Fig. 2:10) comprising a closure member (e.g. Fig. 2:5) that engages with the inlet (Fig. 1:1) and has on its periphery at least one indentation equally distributed on the periphery (e.g. Fig. 2:14.2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the muffler taught by Meusen to include the teachings of Olszok. The advantage of this would be means for reducing overpressure inside the motor thereby reducing damage to muffler components including springs.

**Claim 31:** Meusen and Olszok et al teach the limitations of claim 30. Referring to claim 31, Olszok et al teach two indentations (Fig. 2:14.2,14.3).

**Claim 49:** Meusen and Olszok et al teach the limitations of claim 24. Referring to claim 49, Olszok et al teach the actuator (10) is secured to a flattened middle of a diaphragm on a pressure side of a pressure container (Fig. 7: 3.1).

11. Claims 29, 35-37,40, 55,60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meusen as applied to claim 23 above, in view of Takadoro et al (US 4,926,636).



**Claims 29 and 55:** Meusen teaches the limitations of claims 24 and 23. Referring to claims 29 and 55, Meusen does not teach the actuator is biased by a spring in a direction of a closing position that closes the inlet, and is movable when a gas pressure of flowing exhaust gas is increased before the inlet, against a force of the spring into an open position opening the inlet. Takadoro et al teach an actuator is biased by a spring (Fig. 1:26b) in a direction of a closing position that closes an inlet, and is movable when a gas pressure of flowing exhaust gas is increased before the inlet, against a force of the spring into an open position opening the inlet (Col. 6:17-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus taught by Meusen to use a spring as taught by Takadoro et al. The advantage of this would be the ability to drive the actuator.

**Claims 35 and 60:** Meusen and Takadoro et al teach the limitations of claims 29 and 55. Referring to claims 35 and 60, Takadoro et al teach the actuator comprises a passive control element and automatically reaches its opening position due to a force of a counter pressure of flowing exhaust (Col. 6:5-22).

**Claims 36 and 61:** Meusen and Takadoro et al teach the limitations of claims 29 and 55. Referring to claims 36 and 61, Takadoro et al teach the force of the counter-pressure is exerted directly on a cross-sectional surface exposed to exhaust gas flow of the closure member of the actuator against a force of a spring (Col. 6:13-22).

**Claim 37:** Meusen and Takadoro et al teach the limitations of claims 29 and 55. Referring to claim 37, Takadoro et al teach the force of the counter-pressure is exerted on a separate actuating element of the actuator to move the actuator into an open position (Fig. 1:71).

**Claims 40 and 62:** Meusen and Takadoro et al teach the limitations of claims 23 and 24. Referring to claims 40 and 62, Takadoro et al teach the actuator comprises an active control

element (e.g. Fig. 1:16) and a separate actuating element (e.g. Fig. 1:71) that is driven by control electronics (Fig. 1:61) of a motor vehicle engine.

12. Claims 38, 39 and 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meusen and Takadoro et al, and further in view of Olszok et al (US 5,821,474).

**Claim 38:** Meusen and Tadokoro et al teach the limitations of claim 37. Referring to claim 38, Takadoro et al teach, the actuating element comprises a pressure container (Fig. 1:26a), a pressure side of a diaphragm in the pressure container is connected via a pressure duct to the counter-pressure before the inlet of the pipe branch (Col. 6:5-13), and a spring is arranged in the pressure container (Fig. 1:26a). They do not teach a spring arranged in the pressure container on a low-pressure side of the diaphragm, and a middle of the diaphragm is connected to the actuator. Olszok et al teach the actuating element (Fig. 2:10) comprises a pressure container (e.g. Fig. 2:14.4), a pressure side of a diaphragm (Fig. 2:11.3) in the pressure container is connected via a pressure duct (Fig. 2:15.4) to the counter-pressure before the inlet of the pipe branch, and a spring is arranged in the pressure container on a low pressure side of the diaphragm (Fig.2: 12.3), and a middle of the diaphragm is connected to the actuator (Fig. 2:11.3).

**Claim 41:** Meusen and Tadokoro et al teach the limitations of claim 40. Referring to claim 41, they do not teach the actuating element comprising a low pressure container, a low pressure side of a diaphragm in the low pressure container being connected via a control duct to one of a vacuum pump and an intake pipe of the motor vehicle engine, a middle of the diaphragm being connected to the actuator. Olszok teaches the actuating element comprises a low pressure container (Fig. 2:14.4), a low pressure side of a diaphragm (Fig. 2:11.3) in the low

pressure container being connected via a control duct to one of a vacuum pump and an intake pipe of the motor vehicle engine (Col. 2:5-10), a middle of the diaphragm being connected to the actuator (Fig. 2:11.3).

*It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the muffler taught by Meusen and Tadokoro et al to include the teachings of Olszok. The advantage of this would be means for reducing overpressure inside the motor thereby reducing damage to muffler components including springs.*

**Claims 39 and 42:** Meusen, Tadokoro et al and Olszok et al teach the limitations of claims 38 and 40. Referring to claims 39 42, Olszok et al teach the middle of the diaphragm is connected to a free end of a valve plunger (Fig. 2:13) of a disk valve (Fig. 2:5.1)

**Claim 43:** Meusen, Tadokoro et al and Olszok et al teach the limitations of claim 41. Referring to claim 43, Olszok et al teach a pressure side of the diaphragm of the low pressure container comprises a housing vent bore (Fig. 2:15.4) that provides atmospheric pressure (Col. 3:63-67).

**Claim 44:** Meusen, Tadokoro et al and Olszok et al teach the limitations of claim 41. Referring to claim 44, Olszok et al teach a pressure the pressure side of the diaphragm of the low-pressure container is directly exposed to the atmosphere (Fig. 2:15.4).

**Claim 45:** Meusen, Tadokoro et al and Olszok et al teach the limitations of claim 41. Referring to claim 45, Olszok et al teach a spring is arranged on the low-pressure side of the diaphragm in the low-pressure container (Fig. 2:12.3).

13. Claim 46 rejected under 35 U.S.C. 103(a) as being unpatentable over Meusen, Tadokoro et al and Olszok et al as applied to claim 41 above, in view of Kao (U.S. Patent 4,866,933).

**Claim 46:** Meusen, Tadokoro et al and Olszok et al teach the limitations of claim 41. Referring to claim 46, they do not teach an electromagnetically operable on/off valve or a steplessly controllable pressure regulating valve is arranged in the control duct, and the on/off valve or the steplessly controllable pressure regulating valve is driven by the control electronics of the motor vehicle engine. Kao teaches an electromagnetically operable on/off valve (Fig. 3:60) arranged in a control duct (Fig. 3:60), and the on/off valve is driven by the control electronics of the motor vehicle engine (Col. 1:45-55).

*It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the muffler taught by Meusen, Tadokoro et al and Olszok et al to include an electromagnetically operable on/off valve as taught by Kao. The advantage of this would be an exhaust silencer that automatically responds to the rpm of an engine.*

14. Claims 32,33,57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meusen applied to claim 23 above, in view of G.A. Kingsley (U.S. Patent 2,072,372).

**Claims 32 and 57:** Meusen teaches the limitations of claim 23. Referring to claims 32 and 57, they do not teach the actuator comprises a closure member that engages with the inlet, and comprises axial passages that are distributed over the cross section of the closure member. G.A. Kingsley teaches the actuator comprises a closure member (18) that engages with the inlet (4), and comprises axial passages that are distributed over the cross section of the closure member (7-10).

**Claims 33 and 58:** Meusen teaches the limitations of claim 23. Referring to claims 33 and 58, they do not teach the actuator comprises a closure member that engages with the inlet and has a diameter such that in a closed position a peripheral gap to an internal diameter of the inlet remains free. G.A. Kingsley teaches the actuator comprises a closure member (18) that engages with the inlet (4) and has a diameter such that in a closed position a peripheral gap to an internal diameter of the inlet remains free (Fig. 1: free area around 16).

*It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the muffler taught by Meusen to include the teachings of G.A. Kingsley. The advantage of this would be an exhaust silencer that prevents accumulation of backpressure.*

15. Claims 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meusen in view of and Olszok et al and Kao.

**Claim 63:** Meusen teaches a plurality of mufflers (Fig. 1: 12), and an actuator (Fig. 1: 9) for changing a flow resistance of exhaust gases flowing through the mufflers (12) to change the damping characteristic of the muffler device, wherein the actuator (Fig. 1: 9; Fig. 2: 29) is provided in a pipe bifurcation comprising an inlet (Fig. 1: 2; Fig. 2: 22) and a plurality of outlets (Fig. 1: 8, 9; Fig. 2: out from 24, 25), each outlet being connected by a connecting pipe to one of the mufflers (12), and a throughflow cross section of the inlet being variable by means of the actuator (Fig. 1: 9; Fig. 2: 29); wherein there are two mufflers (Fig. 1: 12) and two outlets (Fig. 1: 8, 9), the actuator comprises an active control element (9) and a separate actuating element (e.g. Fig. 1: 10) that is driven by control electronics (col. 4: 28-30). Meusen does not teach the actuating element comprises a pressure container, a pressure side of a diaphragm in the pressure container is connected via a pressure duct to the counter-pressure before the inlet of

the pipe branch, and a spring is arranged in the pressure container on a low pressure side of the diaphragm and a middle of the diaphragm is connected to the actuator; an electromagnetically operable on/off valve arranged in a control duct and the on/off valve is driven by the control electronics of the motor vehicle engine.

Olszok et al teach the actuating element (Fig. 2:10) comprises a pressure container (e.g. Fig. 2:14.4), a pressure side of a diaphragm (Fig. 2:11.3) in the pressure container is connected via a pressure duct (Fig. 2:15.4) to the counter-pressure before the inlet of the pipe branch, and a spring is arranged in the pressure container on a low pressure side of the diaphragm (Fig. 2:12.3), and a middle of the diaphragm is connected to the actuator (Fig. 2:11.3). Kao teaches an electromagnetically operable on/off valve (Fig. 3:60) arranged in a control duct (Fig. 3:60), and the on/off valve is driven by the control electronics of the motor vehicle engine (Col. 1:45-55).

*It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the muffler taught by Meusen, to include the teachings of Olszok et al and Kao. The advantage of this would be means for reducing overpressure inside the motor thereby reducing damage to muffler components including springs and an exhaust silencer that automatically responds to the rpm of an engine.*

#### **Allowable Subject Matter**

16. Claims 47, 48, and 50 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Prior Art fails to teach or make obvious a first connection connected to a second connection in a first valve position, and the second connection connected to the third connection in a second

valve position; or a plunger guided through a sealing plug in a partition between two outlets outward as far as a spring housing.

### ***Response to Arguments***

17. Applicant's arguments filed 08 February 2005 have been fully considered but they are not persuasive. In response to applicant's argument that the claims are not anticipated by the prior art, there is nothing in applicant's claim language that precludes the examiner from reading the prior art as meeting the claimed limitations.

### ***Conclusion***

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Renata McCloud whose telephone number is (571) 272-2069. The examiner can normally be reached on Mon.- Fri. from 8 am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2800 ext. 4. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Renata McCloud  
Examiner  
Art Unit 2837

RDM



MARLON T. FLETCHER  
PRIMARY EXAMINER